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IN THE

Supreme Court of the United States

OCTOBER TERM, 1971

No. 70-283

FREDERICK E. ADAMS,
Petitioner,

v.

ROBERT WILLIAMS,
Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE RESPONDENT

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CONSTITUTIONAL PROVISIONS & STATUTES

In addition to the Fourth Amendment to the United States Constitution and Section 6-49, 19-246, 29-35 and 29-38 of the Connecticut General Statutes, which are set forth in the appellant's brief (pp. 2-5) the appellee submits the following constitutional and statutory provisions are involved in this appeal.

1. That portion of the Fifth Amendment of the United States Constitution which provides,

"No person shall be . . . compelled in any criminal case to be a witness against himself. . ." United States Code Annotated, Constitution, Amendments 1 to 5, page 297.

2. That portion of Section 1 of the Fourteenth Amendment of the United States Constitution which provides,

". . . nor shall any State deprive any person of life, liberty or property, without due process of law; . . ." United States Code Annotated, Constitution, Amendments 6 to 14, page 288.

3. Section 54-33f of the Connecticut General Statutes as in effect during 1966,

"A person aggrieved by search and seizure may move the court which has jurisdiction of his case, or if such jurisdiction has not yet been invoked, then the court which issued the warrant, for the return of the property and to suppress for use as evidence anything so obtained on the ground that: (1) The property was seized without a warrant, or (2) the warrant is insufficient on its face, or (3) the property seized is not that described in the warrant, or (4) there was not probable cause for believing the existence of the grounds on which the warrant was issued, or (5) the warrant was illegally executed. The court shall receive evidence on any issue of fact necessary to the decision of the motion. If the motion is granted, the property shall be restored unless otherwise subject to lawful detention and it shall not be admissible in evidence at any hearing or trial. The motion shall be made before trial or hearing unless opportunity therefor did not exist or the defendant was not aware of the grounds for the motion, but the court in its discretion may entertain the motion at the trial or hearing." Connecticut General Statutes Annotated, Volume 28, Titles 53 to 55; Cumulative Annual Pocket Part for use in

1971-1972, page 179; Public Acts of the State of Connecticut January Session, June Special Session, 1963, Public Act No. 652, Section 7, pages 1002-1003.

4. Constitution of the State of Connecticut, 1965, Article I, Section 7,

> "The people shall be secure in their persons, houses, papers and possessions from unreasonable searches and seizures; and no warrant to search any place, or to seize any person or things, shall issue without describing them as nearly as may be, nor without probable cause supported by oath or affirmation." Connecticut General Statutes Annotated, Constitution, Volume 1, page 343.

5. That portion of Article I, Section 8 of the Constitution of the State of Connecticut of 1965, which provides,

> ". . . No person shall be compelled to give evidence against himself, nor be deprived of life, liberty or property without due process of law, . . ." Connecticut General Statutes Annotated, Constitution, Volume 1, page 344.

6. Article I, Section 9 of the Constitution of the State of Connecticut of 1965,

> "No person shall be arrested, detained or punished, except in cases clearly warranted by law." Connecticut General Statutes Annotated, Constitution, Volume 1, page 344.

7. Article I, Section 15 of the Constitution of the State of Connecticut of 1965,

> "Every citizen has a right to bear arms in defense of himself and the State." Connecticut General Statutes Annotated, Constitution, Volume 1, page 345.

QUESTIONS PRESENTED FOR REVIEW

1. Does the Fourth Amendment's prohibition against all searches and seizures except those based upon a warrant and probable cause invalidate a search and seizure based solely upon hearsay information from an undisclosed informant, where there is no factual basis to conclude either that the informant was reliable or that the informant's information was reliable?

2. Does the doctrine enuciated in *Terry v. Ohio*, 392 U.S. 1 (1968) permit a seizure of a concealed weapon from a citizen by a police officer where there is no showing that the officer either observed conduct or possessed other information sufficient to form a reasonable belief that the citizen presented an immediate threat of danger to the officer or to the public?

a. Is any such right of search and seizure more restricted in States where the carrying of concealed weapons is authorized by its constitution and statutes?

3. Even if the police officer in this case was authorized to seize a gun from the appellee's waist, did this seizure justify his arrest and the general exploratory search of his person and motor vehicle which followed?

SUPPLEMENT TO APPELLANT'S STATEMENT OF THE CASE

The appellee essentially agrees with the statement of the case except that he would characterize the evidence somewhat differently. Thus appellee would note that the evidence revealed that Officer Connolly spoke to an informant, who told him, "There is a man over in that car with a gun on his person at his waistband, and this man also has drugs." (App. 92-3). At the time he received this information he could see the car in question parked nearby and a person sitting in it. (App. 93). Officer Connolly then radioed for assistance and other officers were summoned. (App. 101-2). Prior to their arrival he crossed

the street, walked in front of the car and stopped by the passenger door. (App. 93, 105). He tapped on the window and said "open the door". (App. 91). The occupant rolled down the window. (App. 91). Officer Connolly observed a man sitting on the passenger side of the front seat. (App. 91). The car motor was not running. (App. 101). This passenger was sitting quietly and made no gesture or comment. (App. 101). Officer Connolly reached in and withdrew a gun from the appellee's waistband. (App. 94). This gun was not visible prior to its removal. (App. 115). Officer Connolly did not draw his own gun prior to this action. (App. 94). Officer Connolly then had the appellee alight, arrested him and advised him of his rights. (App. 97, 107). A short time later two other officers arrived. (App. 107). Appellee's person was searched and a jar with heroin in it and some bags of heroin were removed from his clothing pockets. (App. 108-9, 111-2). The car was then searched and a machete was found under the front seat. (App. 109).

The informant had given the officer only one prior tip. (App. 95-6, 97). This was in the winter of 1965 and was information that homosexual activity was going on in the Bridgeport Railroad Station. (App. 96). This information could not be substantiated because no evidence of such a crime was found. (App. 96). No arrest resulted from it. (App. 96). Officer Connolly was aware when he got this tip that the informant had a criminal record for breach of peace and disorderly conduct. (App. 100-1).

During a lower court hearing Officer Connolly testified that he was in his radio car and went to the Williams' car in response to a police signal. No mention was made of any informant. (App. 78, n. 9 [the transcript of that proceeding being an exhibit in this case, App. 9-18]).

ARGUMENT

The appellee submits that this case raises three basic questions:

(1) Did Officer Connolly have a right to arrest Williams prior to the seizure?

(2) If Officer Connolly did not have the right to arrest Williams prior to the seizure did he nonetheless have the right to make the seizure?

(3) Did Officer Connolly have the right to arrest Williams after the seizure and thereafter to make a general exploratory search of his person and of his car?

The appellee submits that each of these questions must be answered in the negative.

A. NO PROBABLE CAUSE EXISTED TO ARREST WILLIAMS PRIOR TO THE SEIZURE.

The evidence clearly indicates that Officer Connolly's actions were precipitated by information received from an informant. This informant was not identified and both the State and Federal District Court upheld the State's contention that this informant's identity should not be disclosed. (App. 94-101, 78, fn. 9).

This informant had only given one prior tip to the police, which tip was totally unsubstantiated. Further the information given in this case lacked any basis by which the officer might determine that it was based upon personal observation or some other legally sufficient source. Finally up until the time of the seizure the only independent corroboration which the officer had was that the car which the informant was pointing to was there and that the occupant which the informant referred to was there.

Hearsay as the foundation for probable cause falls into several general areas. In some instances the hearsay standing alone can supply probable cause whereas in other instances it may require additional corroboration before probable cause will be reached.

Hearsay which in itself will satisfy probable cause must meet two conditions. These two conditions are (1) there must be a factual foundation justifying trust in the declarant and (2) there must be a factual demonstration that the declarant's information arises either from personal observation or from some other legally sufficient source.

Satisfaction of the first test is reached in various ways: Thus a statement of a citizen recounting contemporaneous criminal activity committed upon his person or property or in his presence is deemed to come from a reliable source. *Pendleton v. Nelson*, 404 F.2d 1074, 1075-6 (9 Cir. 1968); *Wimble v. United States*, 369 F.2d 950 (D.C. Cir. 1966); *United States v. Traceski*, 271 F. Supp. 883 (D. Conn. 1967); *State v. Mazzadra*, 28 Conn. Sup. 252, 258 A. 2d 310 (1969). The rationale for reliance upon this type of declarant rests in the likelihood that a citizen, whose identity is usually available, would ordinarily not contrive a complaint of this type. *State v. Mazzadra, supra.* The appearance of the declarant and circumstances of the complaint, however, are important to an initial finding that he falls within this class. *Ibid.*

A second instance where the declarant's reliability is recognized without resort to proof of prior reliability is in the case where the declarant by his statement inculpates himself in the criminal conduct which he is recounting. *Spinelli v. United States*, 393 U.S. 410, 425, 89 S. Ct. 584, 21 L. Ed. 2d 637 (1969). While this type of declarant would ordinarily lack the necessary indicia of trustworthiness, the fact that his declaration is self-incriminating renders it reliable upon the same rationale which takes such statements out of the usual evidential prohibition against hearsay. *Ibid.*

The third instance is the one with which we are confronted in this case. This is the police informant. This type of person, usually undisclosed, differs from either of the others in that he is not the citizen-victim seeking immediate assistance by virtue of a crime committed against

him, nor is he the citizen-complainant, whose appearance and conduct justify prompt response by police officers. *Daniels v. United States*, 393 F.2d 359 (D.C. Cir. 1968).

Where reliance is had upon the undisclosed informant independent proof of facts known to the officer when the tip was received and sufficient to justify his reliance on this informant must be proven. *Spinelli v. United States, supra*, at p. 417; *Aguilar v. Texas*, 378 U.S. 108, 84 S. Ct. 1509, 12 L. Ed. 2d 723 (1964). That the requirements set forth in those cases apply with equal vigor to a search incidental to a warrantless arrest was recognized in *Whiteley v. Warden of Wyoming Penitentiary*, 401 U.S. 560, 91 S. Ct. 1031, 28 L.Ed.2d 306 (1971).

In this case the evidence in support of the informant's reliability was totally inadequate. This proof must be objective proof of facts sufficient to justify reliance and not merely proof of the officer's subjective trust. *Recznik v. City of Lorain*, 393 U.S. 166, 69 S. Ct. 342, 21 L.Ed.2d 317 (1968). Here the only evidence was that this informant gave the police one prior piece of information which could never be verified. This it is submitted falls far short of the necessary objective evidence. *Ibid.*

The second standard is even more objective and therefore more easily applied. It requires that independent proof exist prior to the issuance of the warrant or exercise of the warrantless arrest which will permit the executing authority to conclude that it has a reliable basis. *Spinelli v. United States, supra; Aguilar v. Texas, supra*, and *Whiteley v. Warden, supra*. In the first two instances cited such reliability is implicit. In other words in the first situation the citizen tells the officer either that he knows because he saw it or he knows because it happened to him. Similarly in the second type of hearsay its reliability is self-proven because the confessing party says that he knows because he did it. However, this is not true of the informant. Consequently, his statement must be sufficiently surrounded by fact to remove it from the area of con-

jecture or surmise and to negative the possibility that it merely is a reiteration of rumor or some other type of basically unreliable hearsay. *Ibid.* Upon the face of this record it is clear that no such proof existed.

Where the hearsay standing alone is insufficient to warrant an arrest then its defective character can only be cured by a showing of other facts which when viewed in conjunction with the hearsay tend to supply separate corroboration of possible criminal activity. This distinction is most important to any case-by-case analysis, since many decisions evidence that the hearsay fell short of these dual requirements but nonetheless an arrest or search was upheld. It is, however, submitted that these cases, if properly decided, will indicate that the arresting authority acted not only upon the hearsay but also upon other facts which, when viewed in conjunction with the hearsay, supplied probable cause to believe that criminal activity had been or was being committed. This is seen in many cases in this area: *United States v. Soyka*, 394 F.2d 443 *cert. den.* 393 U.S. 1095 (2 Cir. 1968) and *United States v. Mitchell*, 425 F.2d 1353 *cert. den.* 400 U.S. 853 (8 Cir. 1970), (the reliability of the informant established, but not the reliability of his information); *Thompson v. White*, 406 F.2d 1176 (5 Cir. 1969) (the reliability of the information established but not the reliability of the informant); *Bailey v. United States*, 386 F.2d 1 *cert. den.* 392 U.S. 946 (5 Cir. 1967) (neither test of reliability was established). In each of these cases, the facts disclosed that the possible criminal activity was independently corroborated.

Corroboration may cure a defect only when it corroborates the possible criminal activity under scrutiny. *Potter v. United States*, 362 F.2d 493 (5 Cir. 1966). In other words it is not enough that the officer observes merely innocent facts contained in the tip. *Potter v. United States, supra; United States v. Rundle*, 282 F. Supp. 926 (E.D. Pa. 1968). Thus when Officer Connolly saw the car and the occupant he was not obtaining corroboration

of the type which has been deemed sufficient to cure the hearsay defects. *Ibid.*

Based upon the foregoing it is submitted that the federally defined standards of probable cause were not met and thus the seizure cannot be justified as one made incidental to a warrantless arrest. These federal standards govern the activities of Connecticut police officers. *Beck v. Ohio*, 379 U.S. 89, 85 S. Ct. 223, 13 L. Ed. 2d 142 (1964). And the Connecticut courts have acknowledged that "reasonable grounds" to arrest as used in 6-49 of its statutes means "probable cause", *State v. Wilson*, 153 Conn. 39, 212 A.2d 75 (1965), and that arrests based upon undisclosed informants must conform to the standards laid down in *Aguilar v. Texas, supra. State v. Allen*, 155 Conn. 385, 232 A.2d 315 (1967).

B. No Right Short of Probable Cause Exists Which Would Justify This Seizure

It is somewhat ironic that this case turned upon an application of *Terry v. Ohio*, 392 U.S. 1, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968), since Robert Williams was convicted on April 11, 1967 and the trial court's finding of fact which frames the issues for a Connecticut appeal was filed on September 11, 1967 (App. 36-48) whereas *Terry v. Ohio, supra*, was not decided by this Court until June 10, 1968.

It is obvious from reading the finding and by judging the case in the context of the law as it existed when the arrest occurred, when the trial was held and when the appeal was framed that the so-called "stop-and-frisk" doctrine was not even considered. Nonetheless the Connecticut Supreme Court although apparently finding reliability nonetheless announced that the holding of *Terry v. Ohio, supra*, was now a part of Connecticut's common law. *State v. Williams*, 157 Conn. 114, 118, 249 A.2d 245 *cert. den.* 395 U.S. 927 (1968). Compare *State v. Carroll*, 131 Conn. 224, 231, 38 A.2d 798, 801 (1944).

By taking this rather large legal step that court totally ignored much of Connecticut's constitutional and statutory law. For example 6-49 of the statutes limits a policeman's right of arrest to cases where probable cause exists. *State v. Wilson, supra.* This statute has been held to circumscribe the power of police officers in Connecticut; anything exceeding that power being illegal and void. *Sims v. Smith,* 115 Conn. 279, 161 Atl. 239 (1932); *State v. Traub,* 150 Conn. 169, 187 A.2d 230 (1962) vacated on other grounds 374 U.S. 493 on remand 151 Conn. 246, 196 A.2d 755 *cert. den.* 377 U.S. 960. And 54-33f of the statutes expressly limits the power of search and seizure requiring exclusion of any property seized without probable cause. *State v. Penna,* 5 Conn. Cir. Ct. 44, 241 A.2d 385 (1967). Finally Article I, Section 9 of the Connecticut Constitution prohibits either an arrest or a detention except where clearly warranted by law. This is a rather unique provision which should have been considered in passing upon any question of a police officer's right to detain for investigative purposes. Cf. *Sedgwick v. Knibloe,* 16 Conn. 219, 222 (1844) (detain has a particular meaning separate from either arrest or imprisonment). And see *State v. Carroll, supra* at p. 231, 38 A.2d at p. 801.

It has been held that the right to arrest for state offenses is governed by state law, *Ker v. California,* 374 U.S. 23, 88 S. Ct. 1623, 10 L. Ed. 2d 726 (1963). Thus while a state's authority to expand its power of arrest is subject to federally circumscribed limits, it does not follow that the expansion of these limits by the federal courts necessarily constitutes a similar expansion of state authority.

These issues are referred to mainly to point out the threshhold considerations which should be passed upon before the merits of this case are considered. These issues include the basic question of whether Officer Connolly was prohibited by Connecticut law from making these seizures and whether the Connecticut Supreme Court was authorized to make a retroactive application of *Terry*

v. Ohio, supra; Linkletter v. Walker, 381 U.S. 618, 85 S. Ct. 1731, 14 L. Ed. 2d 601 (1965).

In any event the defendant submits that upon the merits of this case an application of *Terry v. Ohio, supra,* is unwarranted.

The teaching of that case, as amplified by *Sibron v. New York,* 392 U.S. 40, 88 S. Ct. 1889, 20 L. Ed. 2d 917 (1968), appears to be that a seizure of the person of a citizen is authorized by the Fourth Amendment when an officer has reasonable grounds to believe that criminal activity is afoot and that once this authority is exercised a limited search may be in order if the officer has reasonable grounds to believe that the suspect may be armed and dangerous to the officer or to the public. *Ibid.*

The criteria for measuring a case claimed to fall within this doctrine requires a determination of whether or not the police officer has a right to stop and whether or not he has a right to search. The two requirements are distinct and the distinction is crucial in this case. Cf. *United States v. Nicholas,* 448 F.2d 622 (8 Cir. 1971). Notwithstanding the fact that the stop itself has been construed to be a seizure within the protection of the Fourth Amendment. *Terry v. Ohio, supra* at p. 21, fn. 16, the courts seem quick to recognize the existence of such a right upon grounds falling short of probable cause, e.g., *United States v. Nicholas, supra; Gaskins v. United States,* 262 A.2d 810 (D.C. 1970); *People v. Navran,* 483 P.2d 228 (Colo. 1971); *Commonwealth v. Berrios,* 437 Pa. 338, 263 A.2d 342 (1970).

While the case law recognizing this right to stop applies fairly broad standards in support of such action, the right to execute a search and seizure during this stop is more rigidly defined. The case law developed to date seems to support this distinction. Thus even the cases suggesting that a stop-and-frisk may be grounded on unreliable hearsay, in fact seek greater justification to support the frisk than they do to justify the prior stop.

This was clearly the case in *Ballou v. Commonwealth*, 403 F.2d 982 *cert. den.* 394 U.S. 909 (1 Cir. 1969); *United States v. Unverzagt*, 424 F.2d 396 (8 Cir. 1970) and *Gaskins v. United States*, *supra*. In each of these cases facts in addition to the hearsay were relied upon to justify the seizure.

In order for that seizure to be justified the police officer must observe facts which justify his belief that the suspect is armed and dangerous. *Commonwealth v. Berrios*, *supra*; *Commonwealth v. Clarke*, 219 Pa. Super. 340, 280 A.2d 662 (1971); *Finley v. People*, 488 P.2d 883 (Colo. 1971); *People v. Navran*, *supra*; *United States v. Dowling*, 271 A.2d 406 (D.C. 1970); *United States v. Lee*, 271 A.2d 566 (D.C. 1971); *United States v. Nicholas*, *supra*; *United States ex. rel. Richardson v. Rundle*, 325 F. Supp. 1262 (E.D. Pa. 1971). The appellee submits that such was not the case here.

The seizure here was not a search incidental to a stop. Rather it was a search, pure and simple. When Officer Connolly received his unreliable information he decided to make a seizure and to arrest if he found what he was told he might find. His intent was obvious. He did not plan to investigate. He planned to arrest. Nothing occurred between the tip and the seizure. The situation thus was not one where unexpected action suggesting possible resort to weapons justified a patdown. *Gaskins v. United States*, *supra*. Therefore to suggest that this was the street confrontation discussed in *Terry v. Ohio*, *supra*, and *Sibron v. New York*, *supra*, is not appropriate. In fact the Ohio decision in *State v. Terry*, 5 Ohio App. 2d 122, 214 N.E.2d 114 (1966) took pains to distinguish a stop-and-frisk from an arrest by pointing out that arrest is in part a matter of intent and therefore a search incidental to an arrest was distinguishable from a frisk which is justified by conduct occurring during a stop. The frisk occurs only when facts arising during the stop justify it. Thus motive is important. In this case the motive was search-and-arrest, not stop-and-frisk.

Further still the need for a seizure was never established. *Terry v. Ohio, supra,* indicates that the frisk-patdown-search becomes appropriate only when the officer is confronted by articulated facts evidencing the possibility that the suspect is armed and presently dangerous to the officer or to the public. *Terry v. Ohio, supra* at p. 24; *Sibron v. New York, supra* at p. 64.

The use of the term, presently dangerous, does not seem superfluous. Cases following *Terry v. Ohio, supra,* recognize the distinction between being armed and being armed and presently dangerous. *Commonwealth v. Bourke,* 218 Pa. Super. 320, 280 A.2d 425 (1971); *Commonwealth v. Clarke, supra; Finley v. People, supra.* This distinction also was recognized in a nonseizure case by Justice Abe in *State v. Goudy,* 52 Hawaii, 497, 479 P.2d 800 (1971) (dissenting opinion). The suggestion in this appeal is that *Terry v. Ohio, supra,* intended to hold that being armed is in all instances the same as being presently dangerous. The appellee suggests that this was not the rationale of that decision. *Terry v. Ohio, supra,* should not be interpreted as allowing searches based upon less than probable cause for violations of certain gun laws. Yet this is the implication if one accepts the argument that a policeman upon receipt of less than probable cause may stop a person and effectuate a search if that information relates to the suspects being armed. Such an argument would require repeal or amendment of the Fourth Amendment, since it would permit searches and seizures upon less than probable cause if a gun was in the picture.

The idea that the possible possession of a gun justifies an immediate search and seizure sharply clashes with Connecticut law. The laws of Ohio and New York may be such that the possession of a concealed weapon is a crime per se, and therefore a police officer could find greater justification for interfering with liberty in order to enforce such laws or to sense danger from their violation. However, Connecticut does not prohibit such activity. Article I, Section 15 of our Constitution, which has been in

effect since 1818, expressly guarantees the right of citizens to bear arms in their own defense. The statutory law dealing with the issuance of permits to carry guns is a model of administrative due process. 29-32b of the Connecticut General Statutes is set forth in the Addendum to the Supplemental Brief filed by this appellee prior to the Second Circuit's en banc delibreations and it evidences a strong public policy favoring the issuance of such permits. Finally the crime itself, 29-35, does not bar the carrying of concealed weapons but only the carrying of such weapons where no permit has issued. Thus it seems anomalous to suggest that a citizen in Connecticut by exercising this statutory and constitutional right impliedly agrees to waive the protection of the Fourth Amendment. Therefore the appellee submits that mere evidence that a man has a gun in his waistband does not warrant an intrusion upon his person. If this is not true under *Terry v. Ohio, supra*, then it is certainly true under the statutory and constitutional laws and public policy of Connecticut.

Finally the appellee would suggest that hearsay of the type involved in this case ought not to permit any intrusion upon Fourth Amendment protections. *Sibron v. New York, supra* at pp. 62-3 and *Terry v. Ohio, supra* at p. 27, both indicate that a police officer may not act solely upon a mere hunch or suspicion. *Spinelli v. United States, supra* at p. 416 and *Aguilar v. Texas, supra* at pp. 112-4, both held that hearsay must be proven reliable in order to establish that it is not merely the declarant's hunch or suspicion. It follows logically that if the policeman, a professional trained in criminal investigation, cannot act on his own suspicions or hunches, then his actions cannot be justified when based upon evidence which may be only the suspicion or hunch of a third-party layman.

C. No Probable Cause Existed to Arrest Williams After the First Seizure and No Right Existed to Justify a Search of the Car Without a Warrant

The appellee briefed to the Second Circuit the contention that whether or not the initial act of seizing the gun was proper, the subsequent searches were not. This point was not considered in the first opinion because the Court there concluded that the seizure was a valid basis for an arrest. The issue became irrelevant in the second opinion because the court decreed that the initial seizure was invalid. The appellee, however, suggests that this issue is distinct.

The right to make a general exploratory search of one's person rests upon the question of whether it is incidental to a valid arrest. *Draper v. United States*, 358 U.S. 307, 314, 79 S. Ct. 329, 3 L. Ed. 2d 327 (1959). A valid arrest only occurs when the officer has probable cause to believe that a crime has been or is being committed. *Brinegar v. United States*, 338 U.S. 160, 175, 69 S. Ct. 1302, 93 L. Ed. 1879 (1949). In this case the sole basis for arrest was the prior seizure. This it is submitted did not justify an arrest.

When the appellee was arrested the only fact known to Officer Connolly was that he had a gun. To reiterate the point previously made, this fact did not evidence a crime under 29-35. No inquiry or check as to the existence of a permit was undertaken. Therefore no evidence of a crime existed. This being so the body search was improper and therefore the seizure of the heroin was likewise improper.

Finally the appellee submitted to the Second Circuit the argument that the search of the car was likewise improper. This would clearly be true if the arrest itself was invalid. However, even if the arrest was valid it was and is claimed that when the police searched the car, Williams was out of it, in custody and under the control of two officers. Under these circumstances the requirement

that a prior warrant be obtained was established. *Preston v. California*, 376 U.S. 364, 367-8, 84 S. Ct. 881, 11 L. Ed. 2d 777 (1964) appears to hold that once a suspect is out of the car and in the physical custody of the police the authority to conduct a warrantless search has ceased, and therefore any seizure occurring thereafter except pursuant to a proper warrant is forbidden. Cf. *Shipley v. California*, 395 U.S. 818, 89 S. Ct. 2053, 23 L. Ed. 2d 732 (1969). The appellee submits that this was the case here and therefore contends that the seizure of the machete was unlawful.

The appellee submits that all the items seized were illegally obtained and were thereafter used to convict him of crimes stemming from their possession. Such evidence violated his Fourth and Fifth Amendment guarantees as they are embodied in the Fourteenth Amendment. *Mapp v. Ohio*, 367 U.S. 643, 81 S. Ct. 1684, 6 L. Ed. 2d 1081 (1961). Since no suggestion has been made in any brief or ruling to date that the validity of the exclusionary rule is in issue the appellee has not directed himself to this point. However, such a discussion would in any event seem totally academic, since 54-33f of the Connecticut General Statutes prohibits the introduction into evidence of any illegally seized goods. Therefore the evidence would not be admissible in Connecticut even if the exclusionary rule were modified or abrogated entirely.

CONCLUSION

The appellee submits that the en banc decision of the Court of Appeals should be affirmed.

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